# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

TROY ARDEN JULIAR, Individually and on :

Civil Action No. 1:08-cv-00933-PAC

Behalf of All Others Similarly Situated,

**CLASS ACTION** 

Plaintiff,

VS.

SUNOPTA INC., et al.,

Defendants.

STEPHEN STRUGALA, Individually and on Behalf of All Others Similarly Situated,

Civil Action No. 1:08-cv-01070-PAC

Plaintiff,

VS.

SUNOPTA INC., et al.,

Defendants.

Civil Action No. 1:08-cv-01313-PAC

RAY FOSTER, Individually and on Behalf of: All Others Similarly Situated,

Plaintiff,

**CLASS ACTION** 

**CLASS ACTION** 

vs.

STEVEN BROMLEY, et al.,

Defendants.

[Caption continued on following page.]

DECLARATION OF DAVID A. ROSENFELD IN SUPPORT OF WESTERN WASHINGTON LABORERS-EMPLOYERS PENSION TRUST'S AND OPERATING ENGINEERS CONSTRUCTION INDUSTRY AND MISCELLANEOUS PENSION FUND'S MEMORANDUM OF LAW IN OPPOSITION TO COMPETING MOTIONS FOR APPOINTMENT AS LEAD PLAINTIFF

Civil Action No. 1:08-cv-01496-PAC ROGER DAVIDSON, On Behalf of Himself and All Others Similarly Situated, CLASS ACTION Plaintiff, VS. SUNOPTA INC., et al., Defendants. MARIE LORENZATO, Individually and on Civil Action No. 1:08-cv-01844-PAC Behalf of All Others Similarly Situated, **CLASS ACTION** Plaintiff, VS. SUNOPTA INC., et al., Defendants. ROBERT KNOX, Individually and on Behalf Civil Action No. 1:08-cv-02034-PAC of All Others Similarly Situated, **CLASS ACTION** Plaintiff, VS. SUNOPTA INC., et al., Defendants. Civil Action No. 1:08-cv-02910-UA ALBERT HALEGOUA, Individually and on Behalf of All Others Similarly Situated, **CLASS ACTION** Plaintiff,

Defendants.

X

VS.

SUNOPTA INC., et al.,

## I, DAVID A. ROSENFELD, declare as follows:

- 1. I am an attorney duly licensed to practice before all of the courts of the State of New York as well as this Court. I am a member of Coughlin Stoia Geller Rudman & Robbins LLP, proposed lead counsel for plaintiff in the above-captioned action. I make this declaration in support of Western Washington Laborers-Employers Pension Trust's and Operating Engineers Construction Industry and Miscellaneous Pension Fund's Memorandum of Law in Opposition to Competing Motions for Appointment as Lead Plaintiff. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.
  - 2. Attached are true and correct copies of the following exhibits:
  - Exhibit A: Four-Factor Chart of the Pension Funds' and SunOpta Investors' Group's Financial Interest;
  - Exhibit B: Email dated April 5, 2008 from David Rosenfeld to Kim Miller;
  - Exhibit C: Notice of class action published on *Business Wire*, a national business-oriented publication, dated February 25, 2008, informing class of January 4, 2007 to January 25, 2008 Class Period;
  - Exhibit D: Press releases issued by Kahn Gauthier Swick dated January 28, February 10, March 9, March 27 and March 28, 2008; and
  - Exhibit E: Tsirekidze v. Syntax-Brillian Corp, Order (D. Ariz. Apr. 7, 2008).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 14th day of April, 2008, at Melville, New York.

s/ David A. Rosenfeld
DAVID A. ROSENFELD

# CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 14, 2008.

s/ David A. Rosenfeld

DAVID A. ROSENFELD

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)

E-mail:drosenfeld@csgrr.com

# Mailing Information for a Case 1:08-cv-01844-PAC

# **Electronic Mail Notice List**

The following are those who are currently on the list to receive e-mail notices for this case.

- Mario Alba, Jr  $malba@csgrr.com, e\_file\_ny@csgrr.com, drosenfeld@csgrr.com\\$
- David Avi Rosenfeld drosenfeld@csgrr.com,e\_file\_ny@csgrr.com,amartin@csgrr.com
- Samuel Howard Rudman srudman@csgrr.com,e\_file\_ny@csgrr.com

## **Manual Notice List**

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

• (No manual recipients)

C	Case 1:08-cv-00	933-PAC D	Document 24-2 Filed 04/14/2008 Page 1 of 1		age 1 of 1	SunOpta Inc
	<u>FIFO</u>	<u>LIFO</u>	Number of	Actual Shares	Number of	
<u>Movants</u>	Losses	<u>Losses</u>	Shares Purchased	Sold During Class Period	Net Shares Purchased	Net Fund Expended
Troy Ardon Juliar	(\$00.764.0E)	(\$00 761 0E)	20.900	0	20.900	(\$207.472.00 <u>)</u>
Troy Arden Juliar	(\$88,761.95)	(\$88,761.95)	20,800	•	20,800	(\$207,172.00)
Larry Mages	(\$87,419.30)	\$1,822.37	11,000	10,690	310	\$57.60
Warren Nesbitt	<u>(\$66,691.30)</u>	<u>(\$66,691.30)</u>	<u>12,500</u>	<u>1,500</u>	<u>11,000</u>	<u>(\$129,312.00)</u>
SunOpta Investors Group Total	(\$242,872.55)	(\$153,630.88)	44,300	12,190	32,110	(\$336,426.40)
Operating Engineers Construction						
Industry and Miscellaneous Pension	(\$210,993.43)	(\$210,993.43)	31,500	0	31,500	(\$387,708.43)
Fund						
Western Washington Laborers-	(\$120,101,22)	(\$400.404.00\)	40.050	40.050	0	(\$400.404.20)
Employers Pension Trust	(\$129,101.32)	(\$129,101.32)	<u>40,950</u>	<u>40,950</u>	<u>0</u>	(\$129,101.32)
CSGRR Total	(\$340,094.75)	(\$340,094.76)	72,450	40,950	31,500	(\$516,809.76)

Page 1 of 1

# **Danielle Myers**

From: David Rosenfeld [drosenfeld@csgrr.com]

**Sent:** Saturday, April 05, 2008 9:01 PM

To: kim.miller@kgscounsel.com; kimmiller225@yahoo.com

Cc: Danielle Myers

Subject: SunOpta Sec. Litig.

## Kim:

As noted in your clients' motion/memorandum for appointment as lead plaintiff, consolidation of all the "various related securities fraud class actions filed against SunOpta" is appropriate. The longest class period asserted in "the various related actions" to be consolidated is 01/04/07-01/25/08. Your clients are the only movants before the court who indicated that they do not intend to assert claims on behalf of all persons who purchased during the longest class period asserted in the actions to be consolidated.

By no later than 5:00 p.m. on this Tuesday, April 8, 2008, please either (1) respond with your clients' holdings and trading data for the longest class period (01/04/07-01/25/08) or (2) confirm that your clients do not intend to assert claims on behalf of class members who purchased SunOpta shares between 01/04/07-05/08/07.

Thanks.

Page 1 of 2

## Copyright 2008 Business Wire, Inc. Business Wire

February 25, 2008 Monday 10:05 PM GMT

**DISTRIBUTION:** Business Editors; Legal Editors

**LENGTH:** 544 words

**HEADLINE:** Coughlin Stoia Geller Rudman & Robbins LLP Files Class Action Suit Against SunOpta Inc.

**DATELINE:** NEW YORK

### **BODY:**

Coughlin Stoia Geller Rudman & Robbins LLP ("Coughlin Stoia") (http://www.csgrr.com/cases/sunopta/) today announced that a class action has been commenced in the United States District Court for the Southern District of New York on behalf of purchasers of SunOpta, Inc. ("SunOpta") (NASDAQ:STKL) common stock during the period between January 4, 2007 to January 25, 2008 (the "Class Period").

If you wish to serve as lead plaintiff, you must move the Court no later than March 28, 2008. If you wish to discuss this action or have any questions concerning this notice or your rights or interests, please contact plaintiff's counsel, Samuel H. Rudman or David A. Rosenfeld of Coughlin Stoia at 800/449-4900 or 619/231-1058, or via e-mail at djr@csgrr.com If you are a member of this class, you can view a copy of the complaint as filed or join this class action online athttp://www.csgrr.com/cases/sunopta/. Any member of the purported class may move the Court to serve as lead plaintiff through counsel of their choice, or may choose to do nothing and remain an absent class member.

The complaint charges SunOpta and certain of its officers and directors with violations of the Securities Exchange Act of 1934. SunOpta primarily specializes in the natural and organic food markets in the United States and Canada.

The complaint alleges that, during the Class Period, defendants failed to disclose: (a) that the Company's financial results were materially overstated because SunOpta failed to timely record an impairment in the value of its berry inventory -- indeed, SunOpta has publicly announced that it would be restating its previously issued financial results for 2007 to correct for the over-valuation of its berry inventory; (b) that the Company lacked adequate internal controls and was therefore unable to ascertain its true financial condition; and (c) that as a result of the foregoing, defendants lacked a reasonable basis for their positive statements about the Company, its prospects and earnings growth.

According to the complaint, on January 24, 2008, the Company announced that it was lowering its 2007 earnings guidance and that financial restatements were likely. In response to this announcement, on the next trading day, shares of the Company stock fell \$3.51 per share, or 37%, to close at \$6.05 per share, on extremely heavy trading volume.

Plaintiff seeks to recover damages on behalf of all purchasers of SunOpta common stock during the Class Period (the "Class"). The plaintiff is represented by Coughlin Stoia, which has expertise in prosecuting investor class actions and extensive experience in actions involving financial fraud.

Coughlin Stoia, a 190-lawyer firm with offices in San Diego, San Francisco, Los Angeles, New York, Boca Raton, Washington, D.C., Philadelphia and Atlanta, is active in major litigations pending in federal and state courts throughout the United States and has taken a leading role in many important actions on behalf of defrauded investors, consumers, and companies, as well as victims of human rights violations. The Coughlin Stoia Web site (http://www.csgrr.com) has more information about the firm.

CONTACT: Coughlin Stoia Geller Rudman & Robbins LLP Samuel H. Rudman, 800-449-4900 or David A. Rosenfeld djr@csgrr.com

Page 2

Coughlin Stoia Geller Rudman & Robbins LLP Files Class Action Suit Against SunOpta Inc. Business Wire February 25, 2008 Monday 10:05 PM GMT

**URL:** http://www.businesswire.com

**LOAD-DATE:** February 26, 2008

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January 28, 2008 Monday 2:46 PM GMT

LENGTH: 716 words

**HEADLINE:** INVESTOR ALERT: KGS Announces the Initial Filing of Securities Fraud Class Action Lawsuit

Against SunOpta, Inc. -- STKL

**DATELINE:** NEW ORLEANS, LA; Jan 28, 2008

## **BODY:**

Kahn Gauthier Swick, LLC ("KGS") has filed a class action lawsuit against SunOpta, Inc. ("SunOpta" or the "Company") (NASDAQ: STKL) in the United States District Court for the Southern District of New York, on behalf of shareholders who purchased the common stock of the Company between August 8, 2007 and January 25, 2008, inclusive (the "Class Period"). No class has yet been certified in this action.

UNLESS A CLASS IS CERTIFIED, YOU ARE NOT PERSONALLY REPRESENTED BY COUNSEL UNLESS YOU RETAIN AN ATTORNEY.

If you would like to discuss your legal rights, you may e-mail or call KGS Managing Partner Lewis Kahn, without obligation or cost to you, toll free 1-866-467-1400, ext. 100, via cell phone after hours at 504-301-7900, or by email at lewis.kahn@kgscounsel.com

SunOpta and certain of the Company's officers and directors are charged with making a series of materially false and misleading statements related to the Company's business and operations in violation of the Securities Exchange Act of 1934 (the "Exchange Act").

On January 24, 2008, following the close of trading, defendants shocked investors after they published a release that revealed, for the first time, that the Company was performing well below expectations and that defendants expected to cause the Company to take a material restatement charge in the near term -- rending its prior reported financial statements and reports unreliable, false and materially misleading. SunOpta, which processes and produces organic foods, said it expected to post a profit of 12 cents to 14 cents per share for the year, citing issues within its fruit and BioProcess groups that led to pretax write-downs and provisions of \$12 million to \$14 million. Among problems the Company cited were inventories within the Company's Fruit Group's berry operations requiring write-down to net realizable value, whereby "preliminary estimates indicated that an adjustment in the range of \$9 to \$11 million for this issue and related items is necessary." Further, the Company disclosed a charge of "approximately \$3 million pre-tax, related to difficulties in collecting for services and equipment provided to a customer under the terms of an existing equipment supply contract within the SunOpta BioProcess Group."

On this news, belatedly revealed on January 24, 2008, shares of SunOpta stock fell precipitously, collapsing over 40%, from a close of \$9.50 per share to approximately \$6.00 per share in the single trading day -- on very high trading volume of over 11.488 million shares traded.

If you wish to serve as lead plaintiff in this class action lawsuit, you must move the Court no later than March 28, 2008. Any member of the putative class may move the Court to serve as lead plaintiff through counsel of their choice, or may choose to do nothing and remain an absent class member. If you would like to discuss your legal rights, you may e-mail or call KGS Managing Partner Lewis Kahn, without obligation or cost to you, toll free 1-866-467-1400, ext. 100, after hours via cell phone 504-301-7900, or by email at lewis.kahn@kgscounsel.com To learn more about KGS, you may visit www.kgscounsel.com. KGS focuses its practice on securities litigation, and has been appointed lead counsel in numerous federal securities cases.

SPECIAL NOTICE: While federal law does not prohibit other lawyers from "announcing" the filing of this class action through the issuance of other press releases, KGS is the law firm that researched, investigated, drafted and filed the securities fraud case against SunOpta. If you are a SunOpta shareholder who decides to contact one of these law-

Page 2

INVESTOR ALERT: KGS Announces the Initial Filing of Securities Fraud Class Action Lawsuit Against SunOpta, Inc. -- STKL Market Wire January 28, 2008 Monday 2:46 PM GMT

yers, KGS reminds you to interview any such lawyer to assure that he or she understands the facts surrounding the substantive claims alleged in the complaint KGS has filed with the Court. Factors bearing on a law firm's ability to successfully prosecute this action and obtain a recovery for you include its lawyers' knowledge of applicable federal securities laws, the resources it will dedicate to prosecution of the case (including the number of lawyers the firm has available to prosecute this action) and the quality of the firm's work.

Contact:

Lewis Kahn Kahn Gauthier Swick, LLC 1-866-467-1400, ext. 100 Lewis.kahn@kgscounsel.com

SOURCE: Kahn Gauthier Swick, LLC

LOAD-DATE: January 29, 2008

Page 1

February 10, 2008 Sunday 10:09 PM EST

**SECTION: LAW & LEGAL ISSUES** 

LENGTH: 520 words

**HEADLINE:** Investor Alert: KGS Reminds SunOpta, Inc. Shareholders That They Have Until March 28, 2008 Deadline to File Lead Plaintiff Application in KGS's Securities Fraud Class Action Lawsuit Against SunOpta, Inc. -- STKL

### **BODY:**

NEW ORLEANS, Feb. 11, 2008 (PRIME NEWSWIRE) -- Kahn Gauthier Swick, LLC ("KGS"), the law firm that filed the first class action lawsuit against SunOpta, Inc. ("SunOpta" or the "Company") (Nasdaq:STKL) seeking a recovery for investors, reminds shareholders of the March 28, 2008 deadline to file lead plaintiff applications. KGS's lawsuit is pending in the United States District Court for the Southern District of New York, on behalf of shareholders who purchased the common stock of the Company between August 8, 2007 and January 25, 2008, inclusive (the "Class Period"). No class has yet been certified in this action.

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More information on this and other class actions can be found on the Class Action Newsline at http://www.primenewswire.com/ca

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Investor Alert: KGS Reminds SunOpta, Inc. Shareholders That They Have Until March 28, 2008 Deadline to File Lead Plaintiff Application in KGS's Securities Fraud Class Action Lawsuit Against SunOp

1-866-467-1400, ext. 100

Lewis.kahn@kgscounsel.com

**LOAD-DATE:** February 12, 2008

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March 9, 2008 Sunday 8:40 PM EST

**SECTION: LAW & LEGAL ISSUES** 

LENGTH: 645 words

**HEADLINE:** Investor Alert: KGS Reminds SunOpta, Inc. Shareholders That They Have Until March, 28, 2008 Deadline to File Lead Plaintiff Application in KGS's Securities Fraud Class Action Lawsuit Against SunOpta, Inc. -- STKL

### **BODY:**

NEW ORLEANS, March 9, 2008 (PRIME NEWSWIRE) -- Kahn Gauthier Swick, LLC ("KGS"), the law firm that filed the first class action lawsuit against SunOpta, Inc. ("SunOpta" or the "Company") (Nasdaq:STKL) seeking a recovery for investors, reminds shareholders of the March 28, 2008 deadline to file lead plaintiff applications. KGS's lawsuit is pending in the United States District Court for the Southern District of New York, on behalf of shareholders who purchased the common stock of the Company between August 8, 2007 and January 25, 2008, inclusive (the "Class Period"). No class has yet been certified in this action.

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SunOpta and certain of the Company's officers and directors are charged with making a series of materially false and misleading statements related to the Company's business and operations in violation of the Securities Exchange Act of 1934 (the "Exchange Act").

If you wish to serve as lead plaintiff in this class action lawsuit, you must move the Court no later than March 28, 2008. Any member of the putative class may move the Court to serve as lead plaintiff through counsel of their choice, or may choose to do nothing and remain an absent class member. If you would like to discuss your legal rights, you may e-mail or call KGS Managing Partner Lewis Kahn, without obligation or cost to you, toll free 1-866-467-1400, ext. 100, after hours via cell phone 504-301-7900, or by email at lewis.kahn@kgscounsel.com To learn more about KGS, you may visit www.kgscounsel.com. KGS is a law firm focused on securities class action litigation with offices in New Orleans and New York City.

KGS' lawyers have significant experience litigating complex securities fraud class actions. Among other cases, KGS has been appointed Lead or Co-Lead Counsel in the following securities cases: In re: U.S. Auto Parts Networks, Inc. Securities Litigation, C.D. Cal.; In re Optionable, Inc. Securities Litigation, S.D.N.Y.; In re Xethanol Corporation Securities Litigation, S.D.N.Y.; Pixelplus Co. Ltd., S.D.N.Y.; In re Witness Systems Inc. Securities Litigation, N.D. Ga.; Whitney Information Network, M.D. Fla.; Bodisen Biotech, Inc., S.D.N.Y.; Pegasus Wireless Corp., S.D. Fla.; In re Xinhua Finance Media, Ltd. Securities Litigation, S.D.N.Y.; Terayon Comm. Systems Inc., N.D. Cal.; Gaming Partners, D. Nev.; and In re BigBand Networks, Inc. Securities Litigation, N.D. Cal.

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Page 2 Investor Alert: KGS Reminds SunOpta, Inc. Shareholders That They Have Until March, 28, 2008 Deadline to File Lead Plaintiff Application in KGS's Securities Fraud Class Action Lawsuit Against SunO

More information on this and other class actions can be found on the Class Action Newsline at www.primenewswire.com/ca/  $\,$ 

CONTACT: Kahn Gauthier Swick, LLC Lewis Kahn 1-866-467-1400, ext. 100

Lewis.kahn@kgscounsel.com

LOAD-DATE: March 10, 2008

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March 27, 2008 Thursday 9:53 PM EST

**SECTION:** LAW & LEGAL ISSUES

LENGTH: 432 words

**HEADLINE:** Investor Alert: KGS Announces Last Day for SunOpta, Inc. Shareholders to File Lead Plaintiff Application -- Shareholders With Over \$100,000 Loss Urged to Inquire -- STKL

### **BODY:**

NEW ORLEANS, March 28, 2008 (PRIME NEWSWIRE) -- Kahn Gauthier Swick, LLC ("KGS"), the law firm that filed the first class action lawsuit against SunOpta, Inc. ("SunOpta" or the "Company") (Nasdaq:STKL) seeking a recovery for investors, announces that Friday, March 28, 2008 is the deadline to file lead plaintiff applications. KGS's lawsuit is pending in the United States District Court for the Southern District of New York, on behalf of shareholders who purchased the common stock of the Company between August 8, 2007 and January 25, 2008, inclusive (the "Class Period"). No class has yet been certified in this action.

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CONTACT: KGS Lewis Kahn 1-866-467-1400, ext. 100

lewis.kahn@kgscounsel.com

LOAD-DATE: March 29, 2008

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March 28, 2008 Friday 5:07 AM GMT

**SECTION:** BUSINESS NEWS

LENGTH: 429 words

**HEADLINE:** Investor Alert: KGS Announces Last Day for SunOpta, Inc. Shareholders to File Lead Plaintiff Application -- Shareholders With Over \$100,000 Loss Urged to Inquire -- STKL

**BYLINE:** By PRIME NEWSWIRE

**DATELINE:** NEW ORLEANS March 28, 2008

## **BODY:**

(PRIME NEWSWIRE) Kahn Gauthier Swick, LLC ("KGS"), the law firm that filed the first class action lawsuit against SunOpta, Inc. ("SunOpta" or the "Company") (Nasdaq:STKL) seeking a recovery for investors, announces that Friday, March 28, 2008 is the deadline to file lead plaintiff applications. KGS's lawsuit is pending in the United States District Court for the Southern District of New York, on behalf of shareholders who purchased the common stock of the Company between August 8, 2007 and January 25, 2008, inclusive (the "Class Period"). No class has yet been certified in this action.

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Investor Alert: KGS Announces Last Day for SunOpta, Inc. Shareholders to File Lead Plaintiff Application -Shareholders With Over \$100,000 Loss Urged to Inquire -- STKL Associated Press Financial Wir

Distributed by the Associated Press

LOAD-DATE: March 29, 2008